

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ERICA ELLIS,

Plaintiff,

v.

Case No. \_\_\_\_\_

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a Foreign Insurance  
Company licensed to do business in New Mexico,

Defendant.

**NOTICE OF REMOVAL**

Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”), by and through its counsel of record, Miller Stratvert P.A. (Todd A. Schwarz and Jesika M. Ulibarri), hereby gives notice of removal of this matter to the United States District Court for the District of New Mexico as follows:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant State Farm hereby gives notice of removal of all counts and claims asserted by the Plaintiff in the civil action filed in the First Judicial District, County of Santa Fe, State of New Mexico, styled: *Erica Ellis v. State Farm Mutual Automobile Insurance Company*; First Judicial District Cause No. D-101-CV-2017-02153 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on State Farm to date are attached hereto as Exhibit 1 (Summons and Acceptance of Service from Office of Superintendent of Insurance) and Exhibit 2 (copy of the below-defined Complaint).

2. Plaintiff’s original filing, which is titled as “Complaint for Breach of Contract, Violation of the Unfair Practices Act, Breach of Fiduciary Duties, and Breach of Implied

Covenant of Good Faith and Fair Dealing” (hereinafter the “Complaint”), was filed in the First Judicial District Court on July 31, 2017. The Complaint and Summons were served on Defendant State Farm through the State of New Mexico, Office of Superintendent of Insurance, on August 2, 2017. *See* Exhibit 1. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) within thirty (30) days of service of the Complaint and Summons.

3. Defendant State Farm states that this is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the sole Plaintiff and the sole Defendant, and the amount in controversy exceeds \$75,000.00.

4. The Complaint asserts that Plaintiff is a resident of Eddy County, New Mexico. *See* Exhibit 2, Complaint ¶ 1.

5. State Farm is a resident of the State of Illinois, as it is incorporated in Illinois and has its principal place of business in the State of Illinois. *See*, Defendant’s Corporate Disclosure Statement filed concurrently herewith.

6. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Defense counsel conferred with Plaintiff counsel prior to filing this removal to determine Plaintiff’s counsel’s view of case value. Plaintiff counsel affirmed his view that this case has a value in excess of \$75,000.

7. The following is established on the face of the Complaint. This case involves an actual controversy between Plaintiff, on the one hand, and Defendant, on the other hand, regarding an alleged motor vehicle collision and alleged resulting personal injuries. Plaintiff alleges that she was covered by an uninsured/underinsured motorist insurance policy issued by

State Farm and that suffered personal injuries due to a vehicle collision on or about October 16, 2014 that was allegedly caused by Bertha Hernandez. *See* Complaint ¶¶ 5-8.

8. Plaintiff alleges that she settled with Ms. Hernandez' insurance company for policy limits of \$50,000.00 and that she is now entitled to recover from State Farm alleged uninsured/underinsured. *See* Complaint ¶¶ 5, 8-11, 39.

9. In addition to the alleged UM/UIM policy limits, Plaintiff also alleges that she has suffered "bodily injury damages, incidental damages, consequential damages and reliance damages, attorney's fees and costs, and other damages...." Complaint ¶ 35.

10. Plaintiff further alleges that she is entitled to an award of punitive damages against Defendant State Farm. *See* Complaint ¶ 37.

11. In her prayer for relief, Plaintiff seeks "just compensation for damages reasonable to compensate her for her damages and losses, including mental anguish", compensatory damages, damages for violation of the New Mexico Insurance Code, treble damages, punitive damages, costs, expenses and attorney's fees, and pre- and post-judgment interest. *See* Complaint at 10-11.

12. Without admitting any of the foregoing allegations, Defendant State Farm respectfully submits that the aggregate "value" of what Plaintiff seeks to recover in this case, including Plaintiff's claim for punitive damages, exceeds \$75,000.00. *See Wiatt v. State Farm Ins. Co.*, 560 F. Supp. 2d 1068, 1075 (D.N.M. 2007) (providing court may "aggregate actual damages, punitive damages, attorneys' fees, and statutorily imposed penalties" when determining whether jurisdictional amount requirement is satisfied).

13. The United States Supreme Court has recently clarified that "as specified in § 1446(a), a defendant's notice of removal need include only a plausible allegation that the amount

in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

14. Notice is being provided to Plaintiff of the filing of this Notice as required by 28 U.S.C. § 1446(d).

15. A copy of this Notice will be filed with the Clerk for the District Court for Santa Fe County in the State Court Action as required under 28 U.S.C. § 1446(d).

16. Defendant demands a jury of twelve

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Todd A. Schwarz

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 22<sup>nd</sup> day of August, 2017, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following participating CM/ECF counsel to be served with same by electronic means and via email to:

David M. Houliston  
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500 Tijeras NW  
Albuquerque, NM 87102  
Telephone: (505) 247-1223

/s/ Todd A. Schwarz

Todd A. Schwarz